

# PRACTICE NOTE 1



## COMPLAINTS AND DISCIPLINARY TRIBUNAL

### EXPERT WITNESSES

The TRIBUNAL hereby GIVES NOTICE to all parties who may appear before it that it intends to apply the High Court Code of Conduct for Expert Witnesses.

#### **1 Procedures To Be Followed By Parties Engaging Expert/s**

- 1.1 A party who is intending to call an expert witness to give evidence before the Tribunal or who otherwise intends to rely on expert evidence should, as soon as reasonably practicable, disclose the identity and relevant background of the expert witness to the Tribunal through its Hearing Officer.
- 1.2 The Hearing Officer of the Tribunal will then canvas those members of the Tribunal who are to sit on the Tribunal to hear the matter as well as any other party to the proceedings, as to whether there are any conflicts of interest (actual or potential) associated with the proposed expert witness.
- 1.3 In the event a conflict of interest is identified or disclosed then the Chairperson will consider and determine how the conflict of interest is to be addressed.

#### **2 Procedures To Be Followed When Giving Expert Evidence**

##### Duty to the Tribunal

- 2.1 An expert witness has an overriding duty to assist the Tribunal impartially on relevant matters within the expert's area of expertise.
- 2.2 An expert witness is not an advocate for the party who engages the witness.

##### Evidence of Expert Witness

- 2.3 In any evidence given by an expert witness, the expert witness must:
  - 2.3.1 acknowledge that he or she has read the High Court Code of Conduct and agrees to comply with it;
  - 2.3.2 state his or her qualifications as an expert;
  - 2.3.3 state the issues his or her evidence addresses and that the evidence is within the expert's area of expertise;
  - 2.3.4 state the facts and assumptions on which his or her opinions are based;
  - 2.3.5 state the reasons for the opinions he or she has given;

- 2.3.6 specify any literature or other material used or relied on in support of the opinions he or she has expressed;
  - 2.3.7 describe any assessments, examinations, tests, or other investigations on which he or he has relied and identify, and give details of the qualifications of, any person who carried them out.
- 2.4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, then that qualification must be stated in his or her evidence.
- 2.5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, then this must be stated in his or her evidence.

#### Duty to confer

- 2.6 An expert witness must comply with any direction of the Tribunal to:
  - 2.6.1 confer with another expert witness;
  - 2.6.2 try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses;
  - 2.6.3 prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement.
- 2.7 In conferring with another expert witness, the expert witness must exercise independent and professional judgement and must not act on the instructions or directions of any person to withhold or avoid agreement.

### **3 Commencement of this Practice Note**

- 3.1 This Practice Note will apply from 1 January 2016.
- 3.2 This Practice Note is made in accordance with the Tribunal's power to regulate its own procedure under Clause 5(3)(a) of the Second Schedule of the Social Workers Registration Act 2003. It is subject to review and change from time to time as the need may arise and as the Tribunal may consider appropriate.

Dated at Wellington this 11<sup>th</sup> day of December 2015



Jo Hughson

**Chairperson** | Social Workers Complaints and Disciplinary Tribunal